

LIRR Disability Fraud
Prepared Remarks for U.S. Attorney Preet Bharara
October 27, 2011

Good afternoon. My name is Preet Bharara, and I am the United States Attorney for the Southern District of New York.

Today we announce charges against eleven men and women for engaging in a pervasive and long-running disability fraud scheme, in which Long Island Railroad employees falsely claimed to be disabled upon early retirement so they could receive extra pension benefits typically between the ages of 50 and 65.

The 74-page complaint describes a fraud perpetrated by doctors, LIRR retirees, and so-called “facilitators” that illegally enriched all of them at the expense of all of us.

The Complaint describes rampant corruption and abuse of the LIRR pension system:

- It describes how LIRR employees would decide in advance when they wished to retire, usually in their early 50’s, and then in a fairly impressive display of clairvoyance would effectively schedule the onset of their disabilities to coincide neatly with their preferred retirement date, giving new meaning to the concept of retirement planning;
- It describes how doctors, often paid in cash, essentially ran disability fraud mills, serving as willing rubber stamps for fraud rather than as independent medical professionals;
- It describes how former LIRR or RRB employees also got in on the action, as “facilitators,” by taking cash payments to help retirees game the system more effectively.
- It describes how employees – in many cases after claiming to be too disabled to stand, sit, walk, or climb steps – retired to lives of regular golf, tennis, biking, and aerobics.
- And it describes how this fraud scheme may ultimately cost the Railroad Retirement Board hundreds of millions of dollars.

Now, before getting to the details of the charges and the charged defendants, let me introduce our law enforcement team.

- I am joined here by Diego Rodriguez, Special Agent in Charge of the New York Office of the Federal Bureau of Investigation, and Barry Kluger, Inspector General of the MTA. I also want to recognize Martin Dickman, the Inspector General of the Railroad Retirement Board, who could not be here today but whose team of special agents has worked tirelessly on this case, together with agents from FBI and MTA.

- I also want to express my appreciation to the career prosecutors who have conducted this meticulous investigation: Assistant U.S. Attorneys Justin Weddle, Danya Perry, Bill Harrington, as well as Lisa Zornberg, the chief of our Complex Frauds Unit.

Now let me get to some of the specifics of the allegations. As many of you here are undoubtedly aware, information has been publicly reported since at least 2008 raising serious questions about, and bases to suspect, disability fraud among LIRR retirees.

- How could it be, for instance, that the vast majority of Long Island Railroad workers who have retired in their 50's have done so on occupational disability – even though the Long Island Railroad has repeatedly been lauded for its safety record?
- How could it be that Long Island Railroad workers applied for occupational disability benefits at a rate 12 times higher than workers of Metro North Railroad – a comparable railroad?

Questions like this led the agents and prosecutors to undertake a probing investigation, spanning several years, that involved the extensive analysis of disability applications, medical records, and employee data; as well as traditional gumshoe investigation techniques – including surveillances, and video and audio recordings.

And what our painstaking investigation has revealed, and as laid bare in the Complaint, is that a massive, deliberate fraud occurred here. Lie after lie was told to the Railroad Retirement Board – by doctors, facilitators and LIRR workers – all to secure what must have seemed like easy money.

Here is how the scheme worked.

First, as the Complaint explains, the Long Island Railroad is the only railroad in the country whose contract with the union allows workers to retire at age 50 and receive an LIRR pension, so long as they have at least 20 years of service.

- Before their retirement dates, as the Complaint relates, many employees gave no hint of any disability – in fact, many worked full time until retirement, took no sick leave, and often even worked hundreds of hours in overtime to inflate their future pension payout.
- Chart #1, “Incentive to Falsely Claim Disability,” explains the incentive for LIRR retirees to falsely claim a disability, and Chart #2, “The Alleged LIRR Disability Fraud Scheme,” explains what people had to do to have the benefit of retiring early at almost full compensation (see attached).

By the way, if you take a look at the Chart #3, “Ajemian & Lesniewski LIRR Disability Patients,” it depicts how most retirees at their first visit to these two charged doctors were not disabled, but all were diagnosed as disabled within two years of their first visit (also see attached).

This is further evidence of doctor-assisted disability planning.

The Complaint charges seven Long Island Railroad retirees who all allegedly told numerous lies to the Railroad Retirement Board under penalty of perjury, and whose actual conduct belies their claimed disabilities and shows the brazenness of the scheme:

- In one case described in the Complaint, a retiree claimed severe pain when gripping simple hand tools and pain in his knees, shoulder, and back from bending or crouching; but after securing a disability pension, he remained an avid tennis player, and in just a nine-month period in 2008, he signed up to play golf on 140 different days.
- In another case, a retiree claimed that walking and standing cause her “disabling pain” and that stairs were “very difficult” for her, but after securing a disability pension, she was surveilled at a gym for more than two hours, climbing on an elliptical trainer and taking a step aerobics class. The surveillance video concluded only because the tape ran out before the supposedly disabled retiree stopped working out.
- In yet another case, a retiree secured his disability pension by claiming severe and disabling pain in his back, shoulder and legs, yet not long after retiring he competed in a 400-mile bike tour in northern New York.
- And other examples are contained in the Complaint.

One last point as to this investigation:

- These seven retirees are being arrested based on the egregious fraud they engaged in and the proof of that fraud as alleged in the Complaint. This fraud was committed in part because the doctors and retirees believed that it would be nearly impossible to detect because it is based on the hard-to-disprove false statements of the retirees and the false assessments of their doctors.
- People need to understand when they look at this complaint that this investigation is ongoing, and we will gather the evidence necessary to charge others as appropriate. If you have lied about your disability and defrauded the RRB, we will consider all appropriate steps criminal and civil to address this fraud.
- In addition to my criminal prosecutors, I am asking attorneys in our civil division to look at all available remedies. We expect that the RRB, MTA and LIRR will also be assessing what steps they need to take to address this problem.

Now let me remind everyone that the defendants charged today are of course presumed innocent unless and until they are proven guilty. Their case will now play out in Manhattan federal court.

And this was a case that needed to be brought.

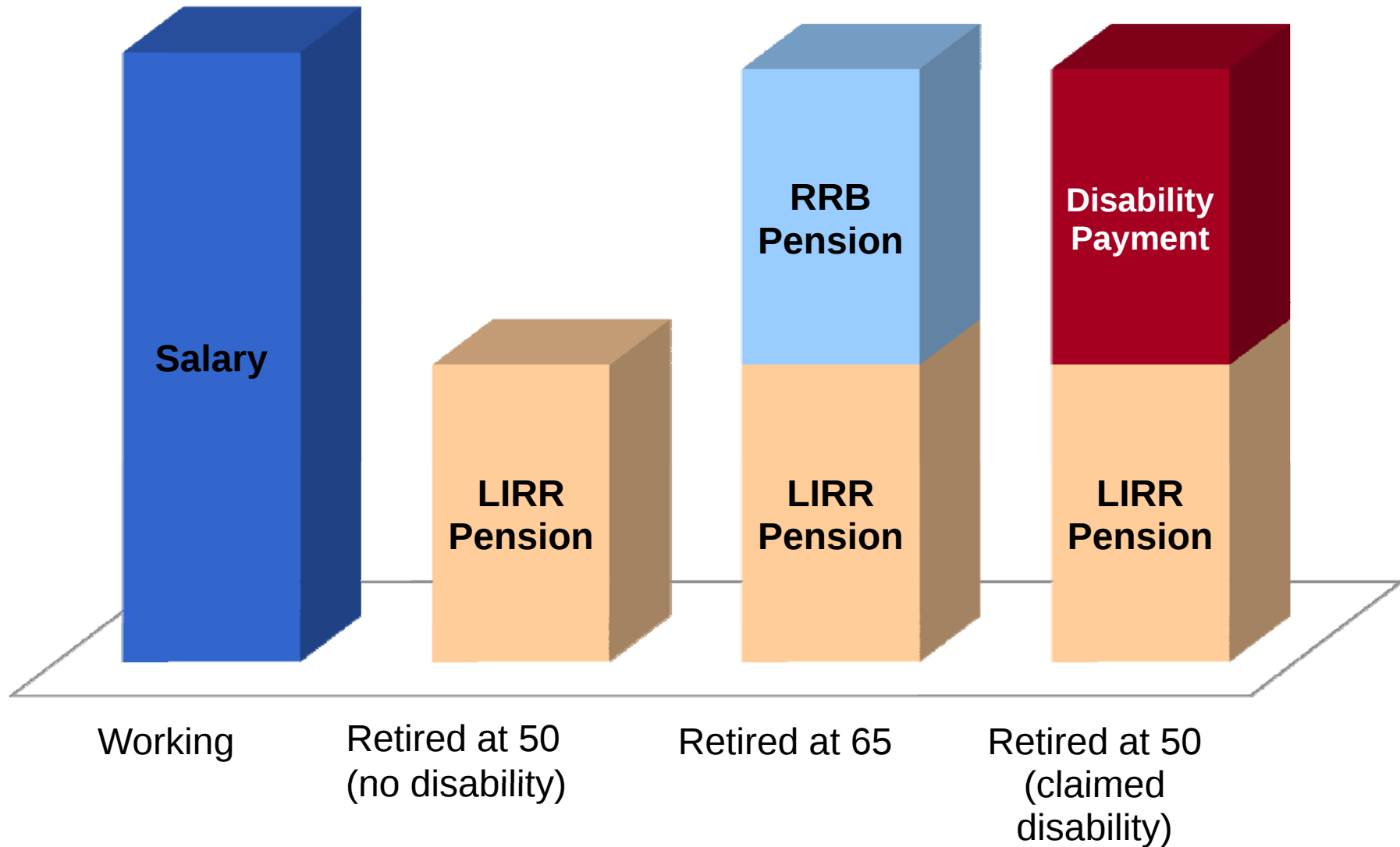
Benefit programs like the RRB's disability pension program were designed to be a safety net for the truly disabled, not a feeding trough for the truly dishonest. If the charges are proved, it will be yet another disheartening example of the kind of corruption we have seen all too much of lately.

And in these tough economic times – with stretched budgets, rising costs, frozen wages, and unemployed people – it is especially disheartening to think that railroad employees would tell a train of lies to pad their early retirements; and that a handful of doctors would traffic on the credibility of their profession to promote a culture of fraud.

People are rightly sick and tired of rampant corruption both in government and in businesses. We in this Office are dedicated to rooting out and punishing corruption in all of its forms – whether we find it in law enforcement, on Wall Street, in corporate boardrooms, in Albany, in City government, or in our pension systems.

1. Diego Rodriguez, SAC of the Criminal Div of NYFO of FBI
2. Barry Kluger, Inspector General of the MTA

INCENTIVE TO FALSELY CLAIM DISABILITY



ALLEGED LIRR DISABILITY FRAUD SCHEME

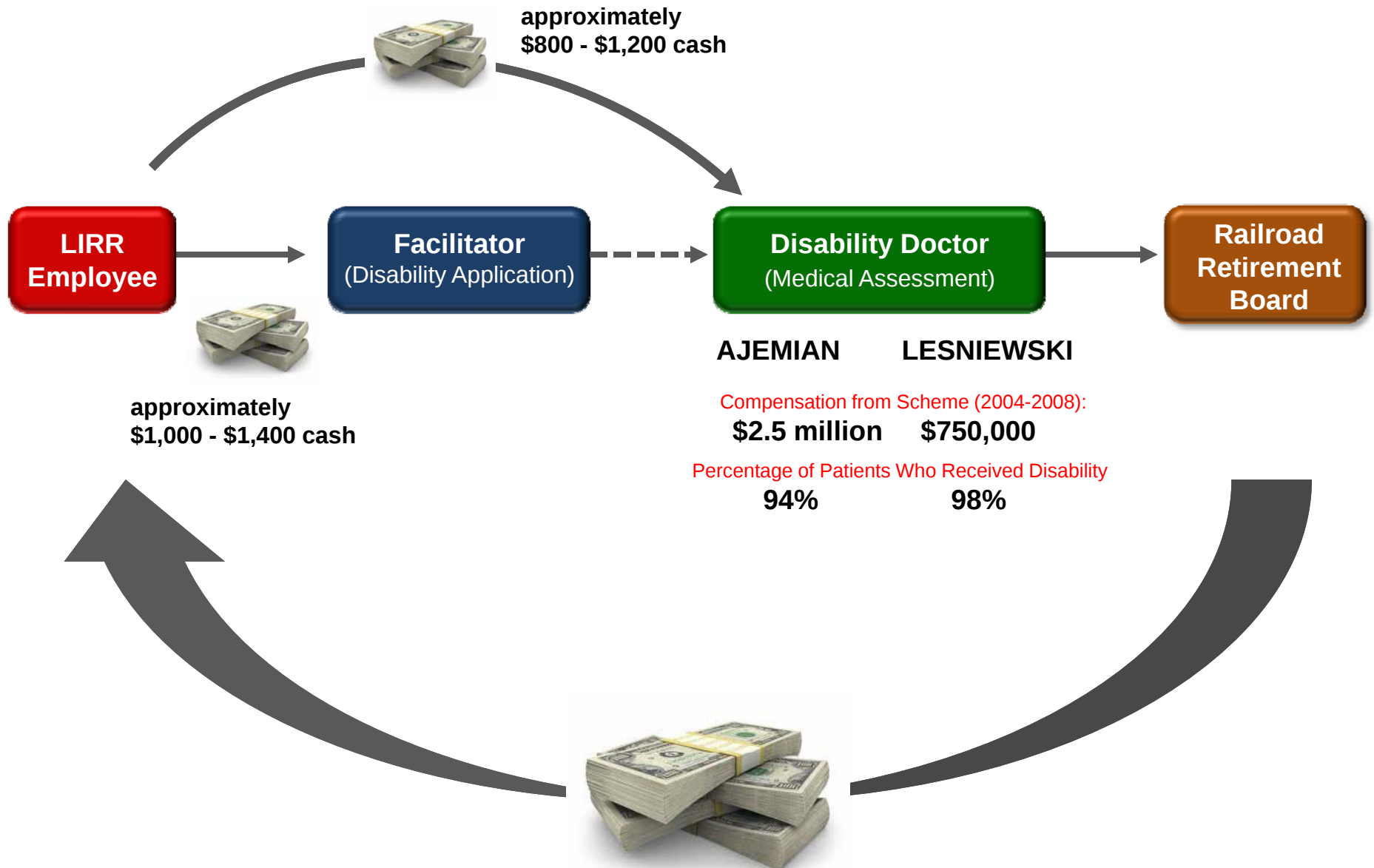


Chart 3

AJEMIAN & LESNIEWSKI LIRR DISABILITY PATIENTS (first seen in 2005)

